IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5875 OF 2005

Dhanjisha Pervez Disawala).. Petitioner

Versus

Miss Piloo D. Broacha and others).. Respondents

Ms. Poonama Trivedi i/b.D.R.Trivedi for the Petitioner.

Mr.Bharat Mehta for Respondent Nos.1 to 5.

Mr.K.F. Merchant i/b.L.T.Kadri for Respondent No.6.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 10TH OCTOBER 2005

P.C.:

. The Petition challenges an order passed by the trial Court granting the amendment to join Respondent No.6 as a party Defendant to the Suit. This order was challenged in a Revision Application filed by the Petitioner which has been dismissed. The Revision has been dismissed since it is held that the order passed by the trial Court was a procedural one and, therefore, a Revision was not maintainable. The rights of the parties have not been decided by the trial Court and hence the Revision was dismissed.

2. It is the contention of the Petitioner that one of her relatives was a tenant of the suit premises which

are owned by Respondent Nos.1 to 5. She therefore filed a declaratory suit claiming tenancy under Section 5(11)(c) of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as "the Rent Act") on the ground that she was a legal heir and residing with the tenant as a member of his family. It appears that she claimed tenancy for the entire flat No.3 situate at Block No.G-1, 1st Floor, Shapur Baug, V.P.Road, Mumbai 400004. An application was filed by Respondent No.6 contending that she was in occupation of a part of the suit premises in view of the fact that she had been lawfully inducted as a sub-tenant of the original tenant. She therefore claimed that she was a necessary and a proper party in the Suit filed by the Petitioner claiming tenancy of the entire flat. This application has been granted and hence the present Petition.

3. Heard Advocates. In my view, the order of the Revisional Court cannot be interfered with since the amendment has not caused any prejudice to the Petitioner. Furthermore, no rights had been created in favour of Respondent No.6 by granting the application. The order is only a procedural one and it does not *ipso facto* confer any rights on Respondent No.6 to claim that either she was a tenant or a lawful sub-tenant. It will be necessary for the Court to decide that issue and,

therefore, the application does not confer any rights on Respondent No.6. In my view, the Revisional order cannot be faulted in view of the judgment in *Sukhdev Prasad Raghubir* vs. *Rambhujarat Kshampati*, **1983 Mh.L.J. 9**.

4. It will, therefore, be necessary to consider whether the trial Court has erred in allowing the amendment to add Respondent No.6 as a party Defendant to the Suit. The Suit filed by the Petitioner is a declaratory Suit, seeking a declaration that she is a tenant of the suit premises after the death of the original tenant. The suit premises consist of several rooms. A portion of the suit premises is in the possession of Respondent No.6 against whom the Petitioner has filed a proceeding for ejectment. Respondent No.6 claims that she is a lawful sub-tenant and, therefore, entitled to the protection of the Rent Act. Undisputedly, Respondent No.6 is in possession of a part of the suit premises. She is therefore a necessary and proper party who should be heard before any decision in the Suit. In my view, the order passed by the trial Court allowing Respondent No.6 to be joined as party Defendant in the Suit cannot be faulted. Writ Petition rejected.